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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,406	01/22/2004	Mark Unzicker	2-5169-056	4905

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DES MOINES, IA 50309-4076

EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT PAPER NUMBER

3671

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/762,406	<b>Applicant(s)</b> UNZICKER ET AL.	
	<b>Examiner</b> Christopher J. Novosad	<b>Art Unit</b> 3671	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-22 is/are pending in the application.
- 4a) Of the above claim(s) 5-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                                 |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01-22-2004</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restriction***

Applicant's election without traverse of group II, i.e., claims 19-22, in the reply filed on July 14, 2004 is acknowledged. Accordingly, claims 5-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Objections***

Claim 19 is objected to because it appears that --the-- should be inserted before "head" in line 11 since a "head shaft" has already been set forth in line 8. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,266,179 (Golden '179).

*With respect to claim 19*, Golden '179 discloses an excavating apparatus ( Figures 1, 2, and 4) having a prime mover (10) with a longitudinal centerline (not shown) and comprising a

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main frame (14, 18, 12, 28, 26) with an engine (10), a ground drive system (unnumbered - see Figure 1) and an excavation boom (42) operatively attached at a pivot axis thereto, said excavation boom comprising a first end (52) and a second end (48), said first end (52) being operatively pivotally attached to said main frame at the pivot axis, said pivot axis being transverse to the longitudinal centerline of said prime mover, said pivot axis being fixed with respect to the engine, a head shaft (unnumbered) operatively attached to the second end (48) of said boom along a head shaft axis (unnumbered), said head shaft axis being transverse to the longitudinal centerline of the prime mover; and wherein said boom (42) further includes a tilt axis (unnumbered) allowing head shaft (unnumbered) to pivot along the tilt axis which is fixed substantially perpendicular with respect to said pivot axis (unnumbered).

*With respect to claims 20-22,* Golden '179 discloses an excavating apparatus (Figures 1, 2, and 4) having a prime mover (10) with a longitudinal centerline (not shown) and comprising a main frame (14, 18, 12, 28, and 26) with an engine (10), a ground drive system (unnumbered - see Figure 1) and an excavation boom (42) operatively attached at a pivot axis (unnumbered) thereto, said excavation boom comprising a first end (52) and a second end (48), said first end (52) being operatively pivotally attached to said main frame at the pivot axis, said pivot axis being transverse to the longitudinal centerline of said prime mover, said pivot axis being fixed with respect to the engine; a head shaft (unnumbered) operatively attached to the second end of said boom along a head shaft axis (unnumbered), said head shaft axis being transverse to the longitudinal centerline of the prime mover; and wherein said head shaft is also operatively pivotally attached to said excavation boom along a tilt axis (unnumbered); wherein the tilt axis is fixed substantially perpendicular to said pivot axis (unnumbered), and wherein the tilt axis

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(unnumbered) is fixed substantially parallel to a line substantially perpendicular to said pivot axis (unnumbered).

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. DE 3207104 (German '104).

*With respect to claim 19*, German '104 discloses an excavating apparatus (Figure 1) having a prime mover (7) with a longitudinal centerline (not shown) and comprising a main frame (2) with an engine (7), a ground drive system (unnumbered) and an excavation boom (4) operatively attached at a pivot axis (26) thereto, said excavation boom (4) comprising a first end (adjacent 26) and a second end (adjacent 30), said first end being operatively pivotally attached to said main frame (2) at the pivot axis (26), said pivot axis being transverse to the longitudinal centerline of said prime mover, said pivot axis being fixed with respect to the engine, a head shaft (portion between members 30 in Figure 3) operatively attached to the second end (adjacent 30) of said boom along a head shaft axis (about which members 30 rotate), said head shaft axis being transverse to the longitudinal centerline (not shown) of the prime mover; and wherein said boom further includes a tilt axis (unnumbered - adjacent 3 in Figure 1) allowing head shaft to pivot along the tilt axis which is fixed substantially perpendicular with respect to said pivot axis.

*With respect to claims 20-22*, German '104 discloses an excavating apparatus (Figure 1) having a prime mover (7) with a longitudinal centerline (not shown) and comprising a main frame (2) with an engine (7), a ground drive system (unnumbered) and an excavation boom (4) operatively attached at a pivot axis (26) thereto, said excavation boom (4) comprising a first end (adjacent 26) and a second end (adjacent 30), said first end being operatively pivotally attached to said main frame (2) at the pivot axis (26), said pivot axis being transverse to the longitudinal

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centerline of said prime mover, said pivot axis being fixed with respect to the engine, a head shaft (portion between members 30 in Figure 3) operatively attached to the second end (adjacent 30) of said boom along a head shaft axis (about which members 30 rotate), said head shaft axis being transverse to the longitudinal centerline (not shown) of the prime mover; and wherein said head shaft is also operatively pivotally attached to said excavation boom along a tilt axis (unnumbered - adjacent 3 in Figure 1); wherein the tilt axis is fixed substantially perpendicular to said pivot axis (26), and wherein the tilt axis is fixed substantially parallel to a line substantially perpendicular to said pivot axis (26).

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. 19858151 (German '151).

*With respect to claim 19*, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12, 14) with an engine (12a), a ground drive system (12b) and an excavation boom (18) operatively attached at a pivot axis (unnumbered) thereto, said excavation boom comprising a first end (unnumbered) and a second end (unnumbered), said first end being operatively pivotally attached to said main frame at the pivot axis (unnumbered), said pivot axis being transverse to the longitudinal centerline of said prime mover (12a), said pivot axis (unnumbered) being fixed with respect to the engine, a head shaft (18c) operatively attached to the second end (unnumbered) of said boom (18) along a head shaft axis (18c), said head shaft axis being transverse to the longitudinal centerline of the prime mover; and wherein said boom further includes a tilt axis (AD) allowing head shaft (18c) to pivot along the tilt axis which is fixed substantially perpendicular with respect to said pivot axis (unnumbered).

*With respect to claims 20-22*, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12, 14) with an engine (12a), a ground drive system (12b) and an excavation boom (18) operatively attached at a pivot axis (unnumbered) thereto, said excavation boom comprising a first end (unnumbered) and a second end (unnumbered), said first end being operatively pivotally attached to said main frame at the pivot axis (unnumbered), said pivot axis being transverse to the longitudinal centerline of said prime mover (12a), said pivot axis (unnumbered) being fixed with respect to the engine, a head shaft (18c) operatively attached to the second end (unnumbered) of said boom (18) along a head shaft axis (18c), said head shaft axis being transverse to the longitudinal centerline of the prime mover; and wherein said head shaft is also operatively pivotally attached to said excavation boom along a tilt axis; wherein the tilt axis is fixed substantially perpendicular to said pivot axis, and wherein the tilt axis is fixed substantially parallel to a line substantially perpendicular to said pivot axis.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chris Novosad whose telephone number is (703) 308-2246. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

October 1, 2004